1. S.B. CIVIL WRIT PETITION NO.5902/2003
   Ganpat Singh vs. State of Rajasthan & ors.
2. S.B. CIVIL WRIT PETITION NO.5748/2003
   Raj Bahadur & Ors. vs. State of Rajasthan & ors.
3. S.B. CIVIL WRIT PETITION NO.5709/2003
   Dharam Veer Swami & Ors. vs. State of Rajasthan & ors.
4. S.B. CIVIL WRIT PETITION NO.5673/2003
   Emarata Ram Pooniya & Ors. vs. State of Rajasthan & ors.
5. S.B. CIVIL WRIT PETITION NO.5752/2003
   Ghanshyam Jajpura vs. State of Rajasthan & ors.
6. S.B. CIVIL WRIT PETITION NO.5889/2003
   Ghanshyam Khatri & Ors. vs. State of Rajasthan & ors.
7. S.B. CIVIL WRIT PETITION NO.5395/2003
   Abdul Vaseeh & Ors. vs. State of Rajasthan & ors.
8. S.B. CIVIL WRIT PETITION NO.5768/2003
   Subhash Vishnoi vs. State of Rajasthan & ors.
9. S.B. CIVIL WRIT PETITION NO.5780/2003
   Parmeshwari Dhaka vs. State of Rajasthan & anr.

Date of Order ::: 4.11.2004

HON'BLE MR. B. PRASAD, J.

Mr. M.Mridul, Sr. Advocate a/w Miss Suchita)
Mr. P.P. Choudhary) for the petitioner.
Mr. Sanjay Mathur)
Mr. I.R. Choudhary)
Mr. Sachin Acharya)

Mr. N.M. Lodha, AAG) for the respondents.
Mr. M.R. Singhvi)

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Heard learned counsel for parties.

In the case of S.B. Civil Writ Petition No.5709/2003 (Dharam Veer vs. State), learned counsel Mr.P.P. Choudhary submitted that the present writ petition comes in the backdrop of a selection process initiated by the State of Rajasthan for

recruiting Teachers in schools. Various advertisements were issued and in those advertisements, a condition was incorporated stating, inter alia, that a person seeking employment should possess a degree in Discipline of Education in the nature of B.Ed. and such degree should be from an institution which is recognized by the National Council for Teacher Education (for short "NCTE") established in terms of the Act known as National Council for Teachers Education Act, 1993 (for short "the Act of 1993").

The grievance of learned counsel for petitioner is that while selections were ongoing, such students who had obtained a degree of B.Ed. from an institution which was not recognised by NCTE, have been incorporated in the list of eligible candidates. They have obtained their degrees of B.Ed. from such institutions which are not recognised by the NCTE.

The fact which has been brought on record suggested that this has been so done by the respondents because the operation of the Act of 1993 has been made operative for rest of India except State of Jammu & Kashmir.

The respondent State has considered that Institutions which are situated in Jammu and Kashmir are not required to be recognised by NCTE, as the Act of 1993 has not been enforced there. The degrees obtained from institutions situated in Jammu & Kashmir them cannot be seen to be one which is eclipsed by the

provisions of the Act of 1993. In that view of the matter, their degrees have been recognised by the State of Rajasthan to be one which can be considered valid for recruitment in the cadre of Teacher.

Assailing the aforesaid stand of the State Government, learned counsel for petitioner has submitted that Section 17(4) of the Act of 1993 makes it clear that any person who has taken training or course from an institution which offers teacher education training after the Act of 1993 has come into operation after the Act of 1993, then the institution not being recognised by NCTE, the degree would not be valid for appointment in terms of the advertisement issued, may be that the degree is obtained from an institution of Jammu & Kashmir – a State which is an exempted State from the operation of the Act of 1993. Such degree holders may obtain employment elsewhere but for obtaining employment in terms of the advertisement, they were required to have a degree which was in conformity with the provisions of Section 17(4) of the Act of 1993. Any degree which is in contravention of the statutory provisions of the Act of 1993, cannot be made foundation of seeking employment in terms of the eligibility condition of the advertisement. For ready reference, the condition from advertisement is quoted herein below :-

> " 01. वरिष्ठ अध्यापक, विज्ञान : राजस्थान शिक्षा अधीनस्थ सेवा नियम, 1971 में निर्धारित ऐच्छिक विषयों जन्तु विज्ञान, वनस्पति विज्ञान एवं रसायन विज्ञान में से किन्हीं दो ऐच्छिक विषयों सहित मान्यता प्राप्त विश्वविद्यालय से स्नातक अथवा

समकक्ष तथा मान्यता प्राप्त विश्वविद्यालय से बी. एड. अथवा समकक्ष जो एन. सी. टी. ई. से अनुमोदित
हो ।

" 02. वरिष्ठ अध्यापक, गणित : राजस्थान शिक्षा अधीनस्थ सेवा नियम, 1971 में निर्धारित ऐच्छिक विषयों भौतिक विज्ञान, रसायन विज्ञान एवं गणित में से गणित एवं एक विज्ञान विषय सहित मान्यता प्राप्त विश्वविद्यालय से स्नातक अथवा समकक्ष तथा मान्यता प्राप्त विश्वविद्यालय से बी. एड. अथवा समकक्ष जो एन. सी. टी. ई. से अनुमोदित
हो ।

" 03 . वरिष्ठ अध्यापक, अंग्रेजी : राजस्थान शिक्षा अधीनस्थ सेवा नियम, 1971 में निर्धारित ऐच्छिक विषयों अंग्रेजी ऐच्छिक विषय सहित दो अन्य ऐच्छिक विषय के साथ मान्यता प्राप्त विश्वविद्यालय से स्नातक अथवा समकक्ष तथा मान्यता प्राप्त विश्वविद्यालय से बी. एड. अथवा समकक्ष जो एन. सी. टी. ई. से अनुमोदित हो ।"

Elaborating his arguments, learned counsel has further stated that in the advertisement issued by the respondent, quoted herein-above a condition has been incorporated that the degree in education i.e. B.Ed. or any equivalent degree has to be from an institution which is recognised by NCTE. It leaves no scope for any maneuvering or concession or latitude by the department because they have incorporated this condition. Notwithstanding a condition of exception of the Act of 1993 for the State of Jammu & Kashmir, the Rajasthan State Government needed only those candidates who possessed a degree from an institution which is recognised by NCTE. Had there been any intention for deviation, the State Government, who has framed the policy, could have incorporated an exception in the notification produced as Annexure-P/1 and other similar notifications along

with the writ petition. Since no exception has been carved out in the advertisement, it stands out boldly that it was not intended to incorporate those candidates who have obtained degrees from an institution which has not been recognised by NCTE. It is the prerogative of the employer to put conditions for employment. If this condition has been incorporated, then this condition should have been impugned by those candidates who want to seek employment on the basis of degree obtained from Jammu & Kashmir. Till date, there has been no challenge to this condition. Even after filing of the present writ petitions, no effort has been made to challenge the same. The condition in the notification will be a guiding factor notwithstanding any executive order of the State Government. This condition will operate as an embargo for the State to offer employment to such candidates who are in possession of a degree which is not in conformity with the norms of NCTE.

Learned counsel for petitioner has further emphasised that the rigor of Section 17(4) has been recognised by the Supreme Court in the case of Union of India & Ors. vs. Shah Goverdhan L. Kabra Teachers College reported in JT 2002 (8) SC 269. It was held as under :-

> *"9. In our considered opinion, the High Court committed gross error in construing the provisions of sub-section (4) of section 17 of the Act to mean that it is a legislation dealing with recruitment and conditions of services of pesons in the state service within the meaning of proviso to Article 309 of*

the Constitution. The High Court committed the aforesaid error by examining the provisions of sub-section (4) on its plain terms without trying to examine the true character of the enactment which has to be done by examining the enactment as a whole, its object and scope and effect of the provisions. Even, the High Court does not appear to have applied the doctrine of "pith and substance" and, thus, committed the error in interpreting the provisions of sub-section (4) of section 17 to mean to be a provisions dealing with conditions of service of an employee under the state government.

10. In the aforesaid premises, the conclusion of the High Court that section 17(4) is ultra-vires being beyond the competence of the union legislature cannot be sustained and the said conclusion is accordingly set aside. On examining the statute as a whole and on scrutiny of the object and scope of the statute, we have no manner of doubt that even sub-section (4) of section 17 is very much a law dealing with the coordination and determination of standards in institution for higher education coming within entry 66 of the list III of the seventh schedule and, thus, the union legislature did have the competence for enacting the said provision.

11. We are also of the further opinion that the de-recognition of the B.Ed. (Vacation course) cannot be nullified on the ground of failure to comply with the principle of natural justice. In the judgment under challenge, the High Court has held also that when the institution is imparting the B.Ed. (vacation course) then National Council for Teacher Education could not have refused to recognise the said course. We are unable to accept this reasoning inasmuch as the NCTE is an expert body created under the provisions of the National Council for Teacher Education Act, 1993 and the parliament has imposed upon such expert body the duty to maintain the standards of education particularly, in relation to the teachers education. Education is the backbone of every democracy and any

deterioration in the standard of teaching in the B.Ed. Course would ultimately produce sub-standard prospective teachers who would be teaching in schools and colleges throughout the country and on whose efficiency the future of the country depends. Inasmuch as the teacher himself has received a sub-standard education it is difficult to expect from him a higher standard of teaching to the students of the schools or other institutions. It is from this perspective, the conclusion of an expert body should not be lightly tinkered with by court of law without giving due weightage to the conclusion arrived at by such expert body. From this standpoint, we are of the considered opinion that the High Court committed error in holding that there was no reasonable justification for not recognising the B.Ed. (vacation course) which was being imparted by the institution of Shah Goverdhan Lal Kabra Teachers College. In the aforesaid premises, we set aside the impugned judgment of the High Courtand allow this appeal."

Thus, the learned counsel emphasized that the rigor of Section 17(4) has been accepted by the Hon'ble Supreme Court. Any providance made in this Section has to be adhered to in strict senses. The State Government has not done so in preparing the list of selected candidates for the recruitment in question.

Learned counsel has further argued that those graduate students who had studied for graduation in a particular discipline, have subsequently offered additional subject for graduation. They have qualified in additional subjects. Their marks of additional subjects is being given credit. This is not proper. Their graduation was complete one in the first instance. It is not open to offer any

additional subject and graduation in those subjects cannot be considered for marks. Therefore, the stand which has taken by the department that they can treat additional subjects of such students, is wrong.

Learned counsel has not supported this contention by any interpretation or rules. He only places reliance on a line in Schedule which reads as under :-

"Graduate or equivalent examination with atleast two subjects taught in Schools with Degree or Diploma in Education or Montessory."

The term 'graduation' has not been qualified in the Rule. It would, therefore, be limited to initial graduation and would exclude any additional studies made by the student.

Learned counsel has raised a ground which is not incorporated in the writ petition that those Science graduates, who have not done B.Ed. in Discipline of Science cannot be appointed as Teacher in that discipline. Their basic Discipline was Science, they have taken their B.Ed. degree in another discipline. Therefore, their appointment is against the very policy of appointment of teachers discipline-wise.

Learned counsel has impugned the incorporation of such provisions in the selection, which entitled the authority, to incorporate and award, bonus marks. Earlier a provision was made by the State Government which was valid for 2001

only and, therefore, any subsequent allocation of marks in the name of bonus marks is dehors the providence by the Rules. Learned counsel has brought to my attention an order of the office of Director Education, Bikaner dated 17.8.2003 by virtue of which an authority subordinate to the State Government has made the provisions for bonus marks for the present selections. This is without any sanction of the State Government. Thus, it should be held to be inoperative.

Mr.Mr. Mridul, Sr.Adv. A/w Miss Suchita arguing the case of Emarata Ram (S.B. Civil Writ Petition No.5673/2003) has emphasised that as per the providance in **Rule 19 of the Rajasthan Educational Subordinate Service Rules, 1971** (referred to herein after as the 'Rules of 1971'), in the method of selection, an interview has been provided.

Learned Sr.Advocate has expanded his argument by saying that the candidates who are facing selection come from different Universities, to name Jodhpur, Jammu & Kashmir, Bihar, Uttar Pradesh etc. Since they come from different streams, the marks obtained by them are founded on different perceptions. Therefore, the interview is a justifiable method as has been held by the Hon'ble Supreme Court in a judgment in the case of ***Dr. Dinesh Kumar and others vs. Motilal Nehru Medical College, Allahabad and others*** reported in ***AIR 1985 SC page 1059***.

Marks are the only basis of selection which the respondent department is following. It is violative of Article 14. Such marks have been obtained in different set of circumstances. The curriculum, language and method of education is different in every University. In this perspective, he emphasised that the providence of interview in Rule 19 is validly made in the Rules. The interview should have been made the basis for selection and not the marks obtained in the qualifying examinations.

The entire selection process which has been advertised is contrary to the providence made in Rule 19 because after scrutiny of the applications, the candidates were required to appear in the interview. Since there are no guidelines available for the Committee constituted to interview the candidates, the whole selection is liable to fall in the category of a process where the Committee will act as Arbitrator. No guidance having been provided for interview, the Rules have been violated. No provision has been made for marks for interview in the advertisement. Thus, there is likelihood of such mistakes being committed which cannot be defined and qualified at this stage. For this, learned counsel has placed reliance on the judgments in the case of ***Srichandra Chinar Badaakhara Udasin Society & Ors. vs. State of Jammu & Kashmir & Ors*** reported in ***1996(5) SCC page 732*** (the case related to selection for the candidates to be admitted in MBBS course) and ***AIR 1997 SC page 303 (Chhatar Singh and others vs. State of Rajasthan and others***)

Learned counsel submits that not adhering to Rule 19 has become so disastrous that such elements have crept into the whole selection who have no academic or other qualification to back them. They will be qualified to be teachers only on the basis of such marks which has been obtained of a particular set of standard from the different university.

Learned counsel further argued that as and when the provision was made by the respondents for considering marks of those candidates who have taken additional subjects, it became hazardous. In this prospect, marks in the original exams were considered to be valid except the lowest marks. Instead of lower marks in the subject, marks of additional subject were added while calculating merit. Therefore, the criterion adopted by the respondents is on the basis of a mistaken notion and when a student studies graduation, he is in a stream of discipline in a particular mode. When he opts for a particular subject, then he studies only 1 or 2 additional subjects. He is not burdened by other subjects. Mental ability of such students cannot be judged in the perspective of a candidate who is studying all the subjects. Thus, a discriminatory situation arises and for this learned counsel has placed reliance on an illustration in Rule 7(5)

" यदि कोई अभ्यर्थी ऐसे विषय में स्नातक उपाधि के साथ अतिरिक्त विषय में योग्यता

प्राप्त करता है तो उसके शैक्षिक योग्यता के अंक निर्धारण करने में उस अतिरिक्त विषय के अंक मूल उपाधि में प्राप्तांकों में जोड़े जावे तथा मूल उपाधि में जिस विषय में सबसे कम अंक हो उसके विषय के अंक घटाकर अंकों का निर्धारण किया जावे ।"

Learned counsel further emphasised that the process of selection which has been propounded by the respondent is unfair and unreasonable wherein providence has been made for those students who have offered additional subjects for improvement of marks. Those who could not obtain respectable marks in first stint have been made to attend such respectability by the process of improvement of marks, while studying only the selected subjects and not undergoing the whole process of studies in graduation. They were in a secured situation with a graduation degree under their belt. They opted for those subjects which they preferred to study in isolation. They could attain sizeable marks. Such sizeable marks are added to compute their merit along with the students who have not done so. This kind of advantage being offered to few is unfair and unreasonble and is violative of Article 14 of the Constitution of India.

The Rules only provide for minimum qualification. The Rules don't speak for studying in any additional subjects. As and when selection process provide such eligibility, then it is going beyond the Rules. According to learned counsel, in

the Schedule, which is appended to the Rules of 1971, in Column no.7, there is a provision for selection committee. If the selections are to be made only in accordance with the advertisement issued, then this committee, which is provided for in column no.7 for teachers of Group F, becomes redundant. No part of the Rules which are legislative in character can be considered to be redundant but the process undertaken by the respondent department by far smacks of such arbitrariness wherein the committee as conceived in column no.7 of the Schedule appended to the Rules of 1971 is rendered worthless. Such selections which overlook a committee provided in the Schedule of the Rules cannot be considered to be legitimate selections and, therefore, the selections are bad in the eye of law.

The process has been left to the calculation done in the mechanical manner at the clerical staff level. It is being considered to be the **Linch Pin** of the whole selection and the committee has been rendered to a place where it becomes totally worthless. In Rule 19, interview is provided and that interview is to be provided by that committee but in the present selections, the selection committee does not come into picture. Therefore, the selection which is being defended by the respondents is a selection which is not in accordance with the Rules and in a manner not recognised by the Rules of 1971. Thus, they are dehors the Rules and bad in law.

The scheme of the Rules provides for minimum qualification i.e.

Graduation and Graduation in Education but those who are offered B.Ed. degree are not offered at random. When a candidate gets admission in B.Ed. the offer is according to the subjects offered in graduation. Thus, there is a special category of Degree in Education according to the subjects obtained at the graduation level. This kind of creating different stream of teacher is in accordance with the policy of the State Government that the Teachers of different discipline are taken, therefore, the B.Ed. degree should be offered in a different discipline to the holder of particular subject at his graduation level. But when the concept of additional qualification is brought into picture, then the predominant consideration of selection and providance of particular stream becomes otios. The candidates who obtain graduation in Science and Degree in Education but having offered additional Arts subject is considered to be appointed as teacher in Arts subject. Thus, the whole foundation of edifice created for speciality and superspeciality is violative.

Addressing his arguments in the writ petition of Abdul Waseeh and others, learned counsel submits that a distinction is made for awarding marks for experience. The marks for experience have only been qualified to those teachers who have taught at the aided institutions and not to those candidates who teach in private recognised institutions but unaided institutions. This ignores the chance of those students who have not been employed in the aided institutions because employment is not available in aided institutions because one sometimes had to

feel contented with the employment in private recognised institutions. These private institutions are as good as the aided institutions because sometimes the private institutions are reckoned better than aided and government schools.

Learned counsel has emphasised that in terms of the Rajasthan Non-Government Educational Institutions Act, 1989 (for short “the Act of 1989”), every recognised institution is required to maintain the standards as specified in the Act. These provisions require the private institution to maintain the same standards which a recognised institution is required to maintain. Sometimes in the zeal and enthusiasm, these private institutions maintain better standards because they are put to a stricter discipline. Therefore, the experience gained at private institutions being ignored by the department, is making equals as unequals and unequals as equals. The Hon'ble Supreme Court has depricated the same in the judgment rendered in the case of ***Dr. Mamta Vithal Shetty & Anr. vs. State of Maharastra & Ors.*** reported in ***(1995) 4 SCC 42***.

The only distinction between the aided institution and unaided recognised institution is that the unaided institution do not survive on the grant of the State Government and it has to generate its own fund, hence, the standards do not differ and the department also does not permit these institutions to maintain lower standards. Sometimes in the zeal and enthusiasm, these private institutions make more mark. The experience gained would be of more worth and value than the

experience gained in aided and government schools and hence, the same could not be ignored.

Learned counsel Mr. I.R. Choudhary arguing Writ Petition NO.5748/2003 submits that he represents Teacher Grade-III. The respondents are proceeding for recruitment 100% by way of direct recruitment in the cadre of Teacher Grade-III whereas the Rules provide appointment 50% by way of direct recruitment and 50% by way of promotion. In case recruitment is done 100% by way of direct recruitment, chances of Teacher Grade-III for promotion in Grade-II will be marred. Posts which fall in promotion quota cannot be filled up by direct recruitment.

Learned counsel Mr. Sachin Acharya arguing Writ Petition Nos.5752/2003 & 5780/2003 submits that the petitioners to whom he represents are the teachers of Navodaya Vidhyalaya and exclusion of such teachers for award of bonus marks for experience gained there, is absolutely illegal because Navodaya Vidhayala is an organisation run by Union of India. The schools which are being run by the State Government impart the same kind of education which Navodaya Vidhyalaya is imparting. Not awarding of bonus marks for experience to these teachers of Navodaya Vidhyalaya is illegal and discriminatory.

He further submits that the Rules under which these selections are being

held, there is no provision for awarding bonus marks, therefore, in the advertisement, the bonus marks have been added over and above the Rules, which is not permissible. Something which is not conceived in the Rules, cannot be applied, for this, he relies on a judgment reported in 2000(1) W.L.C page 1 (Deepak Kumar Suthar vs. State and others).

In Writ Petition no.5780/2003, the grievance of the petitioner is that she has participated in Science Exhibition and she is not awarded the marks for extra-curricular activities. Extracurricular activities have been defined in clause 3(xi) as dance, scouting, drama etc. in which science exhibition is not included, and therefore, the petitioner is being denied the bonus marks.

Learned counsel Mr. B.S. Sandhu for Mr.Sanjay Mathur for petitioner submitted that the Rules don't provide for bonus marks, therefore, such award of bonus marks is de hors the Rules.

Learned AAG Mr. N.M. Lodha makes a categoric statement that the recruitment in clause (f) which is made for Senior Teachers is provided 50% by way of direct recruitment and 50% by way of promotion. The promotion quota of 2002-2003 has been filled up and the direct recruitment which is the subject matter of the present writ petition is only with regard to the remaining posts, which falls within the ambit of direct recruitment.

Learned counsel for the respondent State assailing the arguments for the petitioners submit that in Dharamveer Singh's case, a joint writ petition has been filed. The petitioners are alleged to have applied pursuant to the advertisement. Their names, according to the petitioners, figure in the provisional list but that is much below in the merit list. Without there being sufficient statistics available about the merit of the petitioners, nothing can be said about them, except one fact that having taken advantage of advertisement, they cannot now assail the validity of the advertisement. Having applied pursuant to the advertisement, now the petitioners cannot assail the same.

Learned AAG in this regard, places reliance on the judgments reported in 2000(2) SCC page 615 [Suneeta Aggarwal vs. State of Haryana & Ors.] and 1972 I.L.R. Page 711 [Dr. M.C. Mehta vs. State of Rajasthan & Ors.]. I have considered both these cases. In these cases, the conduct of the petitioner was considered against the petitioner. However, no infringement of law was either canvassed or decided by the Courts.

Learned AAG emphasised that in terms of Rule 19, the applications were going to be scrutinised and in that scrutiny, the list was required to be prepared and has been prepared as provisional seniority list. If the candidates were aggrieved by the seniority list so prepared, then they could have applied to the

department and their cases could have been decided in terms of the Proviso which speaks that the Committee or Commission, as the case may be, will be final authority to judge the eligibility of the candidates and, therefore, the case of the petitioners could have been considered.

Learned AAG emphasised that the Committee, at the time of interview, is not powerless and the proceedings as has been filed before the Court delineated that as many as 41 candidates were rejected at the time of interview.

Learned AAG then emphasised that the interview is not a mere eye-wash as is being projected by the petitioners. The interview is for the purpose of verifying the documents for getting the eligibility of the candidates, judging of the validity of the degree obtained by the candidates and the worth of the institution.

Learned AAG then emphasised on the meaning of word “interview” with the help of Dictionary “Lax Lexicon” where the interview has been described as follows :-

> *“**Interview/Written examination/Viva voce**. Written exam assesses a candidate's knowledge & intellectual ability, an interview test is valuable to assess a candidate's overall intellectual & personal qualities. While written exam has certain distinct advantages over the interview test, there are yet no written tests which can evaluate*

a candidate's initiative, alertness, resourcefulness, dependableness, co-operativeness, capacity for clear & logical presentation, effectiveness in discussion, effectiveness in meeting & dealing with others, adaptability, judgment, ability to make decision, ability to lead, intellectual & moral integrity."

The above meaning assigned to the word "interview" stands diluted even by the meaning given by the department itself in the advertisement wherein it has been defined as to for what purpose, the interview has been provided. The limited scope of interview has been provided i.e. tallying the marks but assigning no weightage marks for interview i.e. Only for the purpose of verifying the original documents and the interview is not meant for selection.

Learned AAG further emphasised that in Rule 19 everything has been left to the Committee and there is no providance as far as the marks are concerned and this is also emphasised that in view of the provisions of Rule 19, there is no necessity of making any oral examination at the time of interview.

Learned counsel further submitted that this advertisement dates back to 24th August or around. After so much time of publication, the same has not been even challenged in the writ petition.

Learned AAG then submitted that Rule 19 envisages that the scrutiny of testimonials are to be made and thereafter, they have to be compared and veracity examined and this exercise relates to judging the eligibility of candidate.

Learned AAG also submitted that from last two decades, the exercise, which is under challenge, has stood the test of time. Had it been wrong anywhere, then the same could not have remained in practice and have fallen in its own inertia. Being in vogue for last two decades, it inheres that it is valid for selection for future also. If two interpretations are possible, then in that background, no interference should be made at the behest of the petitioner because something which is going on for last two decades can now also be countenanced.

Learned AAG then submitted that the condition of obtaining a degree from such Institution which is recognised by NCTE relates to only those degrees which are obtained from an area where NCTE Act is applicable. This condition would not be applicable where NCTE Act is not applicable. State of Jammu & Kashmir is excluded from the application of NCTE Act. Therefore, the question of recognition by NCTE does not arise. The universities of Jammu & Kashmir are recognised by U.G.C. Recognition being there, it is perfectly justified to consider their case. In support of this contention, the learned AAG cited two judgments :-

(1) 2002(3) R.L.R. Page 854 [Surendra Kumar Gupta vs. State of Rajasthan & Ors.]

In this case, there is no discussion available about the condition imposed by the department as is available in the instant case.

(2) S.B. Civil Writ Petition No.2502/1989 (Mrs. Madhu Santosh vs. State of Rajasthan) decided on 21.2.1991, where this Court has held that those universities which are established under UGC Act, there cannot be any doubt about the validity of those degrees.

In this case, the validity of impact of the Act of 1993 has not been considered and the case has been rendered before the enactment of Act of 1993 came into force. Therefore, this cannot be considered to be an authority on the point because the Act of 1993 had come thereafter. All such institutions which are established under the UGC Act, the Act of 1993 has been made applicable. Unless recognition is extended by NCTE, the degrees of such institution will be excluded. Specifically in the advertisement the authorities have excluded such degrees notwithstanding the validity of those degrees.

Learned AAG then submitted that whatever are the conditions impeded in the advertisement, either they have to be accepted as such or rejected as such, unless they are in contravention of law. The petitioners have canvassed to follow one condition and ignoring others. Unless it is established that the conditions are in contravention of law, they have to be followed.

Learned AAG then emphasised that qua the qualification, a teacher who is sought to be recruited should be a graduate and also possesses a degree in Education with the subjects which are taught in the school. Since the subjects taught in the school vary from school to school, therefore, those teachers with specific elective subjects of Science, Chemistry, Biology have been separately sought to be recruited.

The qualification as prescribed relate to graduation examination and not to the examination of B.Ed. The two subjects classified related to the level where the incumbent has taken up his graduate examination. This is misnomer as canvassed by the petitioners that there is a B.Ed. Degree of Arts, Science, Commerce. The classification is only available with the graduation degree and not education degree. At the education degree level, the incumbent may offer either of the elected group but his degree will not be classified in accordance with the subjects offered by him in B.Ed. examination.

The argument of the petitioners that since the incumbents are coming after obtaining degrees from different streams of society and from different States, their standards may vary. Learned Counsel for State submitted that this variance cannot be taken cognizance by the authorities and a uniform rule has been prescribed that if there is a degree of graduation and degree of education, then the marks awarded

will be honoured as they have been secured. No distinction can be made on the basis of an institution. If that is done, it will result into hazardous consequences. A uniform policy has been adopted and no discrimination has been made in picking and selecting a candidate on the basis of any State, Language or area. That being the position, no arbitrariness can be seen in the application of Rule.

Regarding the bonus marks, the argument of learned counsel for petitioners is not required to be considered as this Court has authoritatively held in Govind Singh's case (S.B. Civil Writ Petition No.2018/2001 decided on 19.8.2002) that the bonus marks can be awarded.

Learned counsel for the respondent endeavouring to explain the purport of Rule 19, has submitted that the word “interview” has been understood by the petitioner in common parlance whereas the State has supplemented the rule by issuing a circular whereby no marks have been kept for interview and everything has been defined qua the allotment of weightage to various qualifications of the candidates, therefore, interview is a mere formality for verifying the testimonials of the candidates.

Learned counsel for the respondent submitted that in view of the circulars, the appointments are to be made by the merit alone, no weightage will be given to the interview. Further, the language of the Rule has kept the option open to the

authorities to call as many as candidates qualified for appointments as seems desirable to them.

According to the learned counsel for the respondent, a universal yardstick for assessing the students has been adopted and according to that Govt. in its wisdom to avoid any type of discrimination has chosen the line which is universally applied. Therefore, it cannot be said that any attempt is being made to favour any particular section of the society. The rule is being universally applied and there cannot be any rule of absolute perfection, therefore, certain handicaps will have to be endured.

This runs contrary to the general feelings prevailing because the students coming out of a particular State if not studied in particular institution has a high ranking for his certificates and degrees than students having studied in another State. This is not unknown that in some States marks are awarded strictly and in some States marks are awarded liberally. Therefore, the yardstick adopted by the State Govt. is not of a coherent character. This is the effect of treating unequals as equals.

Indeed, there is a clear line of distinction between two set of candidates available; those who have objected to the process of selection and those who do not want to make the selection. If a sizable section is not opposing to it then those

who are put to disadvantage cannot be permitted to impugn the same having submitted to the jurisdiction of the authorities in the manner advertised. If they were aggrieved, they should have come at the inception and now having made known that they do not figure out in the selection list, they have approached this Court, it is blowing hot and cold together. This is the very reason that they have chosen to challenge the providence of the marks in interview at a very belated stage without any jurisdiction with the plea that though the marks have not been provided, they have a chance to succeed in Court. Therefore, this challenge has been invented to frustrate the whole process which has continued for a long period of three decades for selection of teachers. This is an attempt to dictate the terms to the employer that you have to select as per the dictates of the seekers and will have to submit to a process which according to them is proper and justifiable.

The Govt. policy is sought to be challenged on the ground that it is less beneficial and is more liberalized than the one suggested by the petitioners. Such kind of righteousness expressed by the petitioners cannot be permitted to overtake the procedure adopted by the Govt., which is not a new procedure. This procedure has seen a long journey of three decades by virtue of which teachers were selected and the entire State is being imparted education by such selected teachers.

Learned counsel for the intervenors submitted that in the appendix to schedule in Chapter IV, Sec.F – General Teachers, Clause 8, the qualification

provided is “Graduate or equivalent Examination with atleast two subjects taught in Schools with Degree or Diploma in Education or Montessory.” and this nowhere contemplates that a student coming out of any institution from Jammu & Kashmir will not be considered qualified. Therefore, any providence in the advertisement is over and above the rules, and therefore, the same cannot be countenanced and no illegality can be seen to have been committed by the department in considering these tools.

Learned counsel states that there was no need to make any challenge to the condition because this condition was limited only to those States where the NCTE Act is applicable and in the State of Jammu & Kashmir the Act not being in operation this condition will not apply and the language of the advertisement itself is very clear which leaves scope for the consideration of the degrees obtained from the State of Jammu & Kashmir.

Purport of Rule 11 is canvassed by the learned counsel for the petitioners. According to the learned counsel, Rule 11 (2) requires that any incumbent entering into service should have the working knowledge of Hindi written in Devnagri script and knowledge of Rajasthani culture. This is essential because the teachers will be teaching in various segments of Rajasthan and for this, they must have the knowledge of various cultural ethos of the State else it would not be possible for them to impart education or establish rapport with the students of the State and

there is no provision in the advertisement for any one of these requirements, thus the selection is bad because it has missed an essential element which is made essential by the rules to be incorporated in the qualification.

Here, there is a conflict in the statutory rules and policy decision of the Govt. and the policy decision fall short of the requirement of the rules and they cannot supersede the requirement of the rule. As far as the requirement is concerned and rules being not adhered to in its letter and spirit, no credence can be given to the process of selection. The qualifications delineated in the schedule are minimum qualifications and this conjoins itself with experience. Experience has been narrated in the Rules and without such experience being the subject matter of the advertisement, any selection cannot have the sanctity and conformity of the Rules. The experience which is required to be incorporated in the advertisement for recruitment has to be in accordance with the rules which is provided under Rule 11. No blank sanction can be granted to the provided provisions in the advertisement because the requirement in column 4 of clause 8 is the experience. In column 4 the minimum qualification experience having been provided for in the name of experience anything and everything cannot be imported as has been sought to be imported in the advertisement.

Purport of Rule 20 is that the Committee, which will consider the question of suitability, if it considers a candidate suitable, then it will prepare a list of the candidates arranged in the order of merit whereas in the present matter, the list is

arranged in the order of merit by the clerical staff at the inception, and therefore, the spirit of Rule 20 has been violated in the entire process of selection. The advertisement speaks that the purpose of interview is to compare the testimonials of the candidates and not the selection and if this is the purport of the advertisement then it is in direct conflict with Rule 20 and the selections have been made dehors the rules and cannot be countenanced.

Replying to the arguments of the learned counsel for the petitioners, that in Rule 11 what is provided is that the incumbents must have experience as delineated in Schedule, a working knowledge of Hindi written in Devnagri script and knowledge of Rajasthani culture, the learned Additional Advocate General, Mr. N.M. Lodha urged that out of total 5792 incumbents, only few are not from Rajasthan but rest of the students have born in Rajasthan and majority of them have graduated from Rajasthan. To specify, only 500 and odd have graduated from outside. A presumption should be drawn that all the candidates possess the requisite qualification as provided in Rule 11(2). This is also conceded that there is no mechanism provided in the advertisement that qualification will be judged by a particular methodology. Learned Additional Advocate General specifies that when the marksheets will be considered, at that time this can be judged whether the man knows Hindi written in Devnagri script and has knowledge of Rajasthan Culture, or not.

Learned counsel Mr. M.R. Singhvi for intervenors has submitted that in terms of Article 1(2) of the Constitution of India, State of Jammu & Kashmir is an integral part of the Union as it finds place at S.No.15 in the First Schedule. Since Jammu & Kashmir forms an integral part of the Union, the citizens of Jammu & Kashmir have as much rights as the citizens of other States to appear for recruitment provided they possess the requisite qualifications.

Learned counsel for the intervenors submit that it was open for Union of India to make a Law under Article 317 of the Constitution of India which apply to the State of Jammu & Kashmir but if a particular law has not been extended to Jammu & Kashmir, then there cannot be a fault found with the State of Jammu & Kashmir in imparting education to its citizens of its subjects and such education cannot be ignored because that is recognised by UGC.

I have heard learned counsel for the parties and considered the arguments advanced at the bar and have perused the record.

First and the important question in these writ petitions relates to the degrees obtained from the institutions which are situated in Jammu & Kashmir. Such degrees have not been recognised by NCTE. The reason is that the operation of the Act of 1993 has not been made effective in the State of Jammu & Kashmir. Thus, as far as the degrees obtained by the students in the State of Jammu & Kashmir are concerned, may be that their validity cannot be doubted, but in the instant case,

selections are being held pursuant to the advertisement issued by the State Government in which a specific condition has been incorporated and that condition requires that a candidate has to possess a degree as recognised by the institution which has sanction of NCTE. This necessarily implies that only those degrees will be considered valid for the selections in question which have the recognition of NCTE. If there was any intention of incorporating the degrees obtained by the candidates from the institutions situated in Jammu & Kashmir, the State could have chosen to incorporate it in the prescription of qualifications. That having not been done, the only inference that can be deduced for qualifying is that only those degrees will be considered to be valid which have the sanctity of NCTE. The exclusion of the State of Jammu & Kashmir from the implementation of the 1993 Act would be of no consequence because the employer has the prerogative of prescribing the minimum qualifications and that having been done by the State Government in no uncertain terms and only those candidates have been said to be qualified who have the degrees from the institutions recognised by NCTE. The Constitutional provision and the autonomy of the State will not be considered a valid proposition to be considered in this judgment because this judgment is on the point of delineated qualifications and in those qualifications, only such degrees have been recognised which have been recognised in terms of the Act of 1993. Thus, when commenting upon the constitutional provisions invoked by the intervenors and the effect of UGC Act, suffice it is to say that the employer has sought selection of such candidates who have have a degree

recognised by NCTE. In none of these writ petitions, this condition has been impugned. So far as this condition is standing, there cannot be any other inference than the one that only those candidates who possess B.Ed. degree which are in conformity with the NCTE Act alone are required to be considered in the present selections. Consequently what follows is that the respondents should exclude such candidates from consideration who have been considered for employment possessing the degrees obtained from such institutions which are not recognised by NCTE.

This is the law laid down by the Hon'ble Supreme Court in the case of Ramana Dayaram Shetty vs. The International Airport Authority of India and others reported in AIR 1979 SC 1628. In this case, the Hon'ble Supreme Court has held as under :-

> *“It is a well settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on paid of invalidation of an act in violation of them. This rule was enunciated by Mr. Justice Frankfurther in Vitarelli v. Seaton (1959) 359 US 535 : 3 L Ed 2d 1012 where the learned Judge said :*
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> *'An executive agency must be rigorously held to the standards by which it professes its action to be judged . ..... Accordingly, if*

dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed. .... This judicially evolved rule of administrative law is now firmly established and if, I may add, rightly so. He that takes the procedural sword shall perish with the sword."

Next argument raised on behalf of the petitioners is that the degrees which are to be considered are obtained from different Universities, therefore, the marks obtained in such examinations cannot be made the basis of selection because it is so divergent that it cannot form the basis of uniform selection. The argument may sound to be one which has a tenor of being attractive but in a heterogeneous society like ours where multiple kind of institutions are seen even in one State, saying that there has to be a uniform standard of all the institutions is asking for moon. Even in the State of Rajasthan, there are privately runned institutions with English as the medium of instructions catering the elite class of society and there are institutions which are run by charitable institutions catering the need of downtrodden. All of them impart education and after a level, such education has got to be considered as uniform. Hazarding an inference that persons coming from different universities should be treated differently, is asking for such situation which instead of serving the purpose of education, would further create disharmony. Such cannot be the intention of Law and the Court is not required to

address such avenues while exercising powers of judicial review. This subject is better left to the wisdom of educationists and in that background, this argument does not merit consideration.

Learned counsel for the petitioners have further submitted that those students who have taken additional subjects have been given advantage of marks in subsequent examinations. This is not a new eventuality. Ever since these kinds of selections were made, this practice was in vogue and nobody prevented the petitioners to opt for this kind of contingency. Thus, the process of selection which has stood the test of time cannot be impugned on this kind of discriminatory allegation. Similar is the question of marks in B.Ed. and subjects in B.Ed. examination. The Educationists have better understanding of these subjects. The Rules of selection are operative in the State since 1971 and ever since, the selections have been held, never had any grievance raised in this connection and this has well served the purpose of department, therefore, only on the basis of novelty of arguments, this question cannot be gone into.

The further argument raised by the learned counsel for petitioners was in relation to experience. This is a qualification which the employer has imposed. Comparison in between the experience obtained in a particular kind of institution and its merits is far beyond the scope of judging its merit in a jurisdiction of judicial review. Therefore, this question also does not appear to be one on the

basis of which any interference is called for in this selection which has gone far ahead.

All these questions could have been raised at the beginning of this process of selection. But none of the petitioners did it. All these questions appear to be generated by the petitioners having sensed that they have no chance of getting into the present selections. Therefore, they are not considered valid for impugning the present selection.

As regards the powers of the committee and impact of interview, they are administrative methodology. Such methodology has been seen to be valid for so many years. The same being challenged by the petitioners after having known that they are not likely to be selected, is only an after thought and, therefore, they are not required to be gone into for the present selections and may be if at appropriate stage, any question is raised, the same may be considered.

The knowledge of Rajasthani Language and Culture is an essential part which will be looked into by the authorities when the final selection list is made and opportunity of interview can be utilised at this juncture. There is still time to judge this aspect as this is requirement of the Rules and the authorities will keep in mind that those who are selected will have the requirement of knowledge of local language and conditions.

This Court finds that no interference is called for in the present selections which have been impugned after the petitioners have chosen to take their chances.

Consequently, these writ petitions having no force are partly allowed as indicated above. Any interim orders passed, are vacated.

(B. PRASAD), J.

S.Phophaliya